

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GERALINE WAMSER**  
Claimant

VS.

**EMPORIA U.S.D. #253**  
Respondent

AND

**EMPLOYERS MUTUAL CASUALTY CO.**  
Insurance Carrier

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Docket No. 181,439

**ORDER**

On June 4, 1996, the application of respondent for review by the Workers Compensation Appeals Board of the February 1, 1996 Award of Assistant Director David A. Shufelt came on for oral argument.

**APPEARANCES**

Claimant appeared by and through her attorney, Gary L. Jordan of Ottawa, Kansas. Respondent and its insurance carrier appeared by and through their attorney, David J. Morgan of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Assistant Director are herein adopted by the Appeals Board.

**ISSUES**

- (1) The nature and extent of claimant's injury and/or disability.

The parties have stipulated the only issue in contention is claimant's entitlement to either a work disability or a functional impairment during the period August 29, 1993 through July 3, 1994 a period of 84.86 weeks. By the stipulation filed August 30, 1995 the parties agree claimant is either entitled to a payment of \$5000 if a work disability is in order or \$1,253.38 if a functional impairment is in order. The Appeals Board will decide only this narrow issue.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Assistant Director fully sets out the findings of fact and conclusions of law applicable to this argument in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Assistant Director are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issue raised.

Having reviewed the evidence, the Appeals Board finds claimant is entitled to a work disability during the period in question and, as such, the Award of the Assistant Director should be affirmed.

Respondent's attempt to apply Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995) to this fact scenario is misplaced. Foulk involved a less than cooperative claimant and a specific job offer made by respondent within claimant's medical restrictions. These elements are absent in this case.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Assistant Director David A. Shufelt dated February 1, 1996, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Gary L. Jordan, Ottawa, KS  
David J. Morgan, Wichita, KS  
David A. Shufelt, Assistant Director  
Philip S. Harness, Director